

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

20-CR-54 (JLS) (JJM)

JONATHON R. CASSATT,

Defendant.

DECISION AND ORDER

Defendant Jonathon Cassatt is charged in a 16-count indictment with fifteen counts of production of child pornography, in violation of 18 U.S.C. §§ 2251(a) and 2251(e), and one count of possession of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2). Dkt. 8. On April 15, 2020, United States Magistrate Judge Jeremiah J. McCarthy was designated to hear and determine, and report and recommend on, all pre-trial proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). Dkt. 9.

On October 19, 2020, Cassatt filed omnibus suppression and discovery motions. *See generally* Dkt. 22. Specifically, Cassatt moved to dismiss for lack of subject matter jurisdiction, moved to suppress all evidence and statements arising from his November 12, 2019 encounter with law enforcement, and to compel *Brady* and *Giglio* material. *See generally id.* The Government responded to Cassatt's motion on November 2, 2020, and cross-moved for reciprocal discovery. Dkt. 27. Cassatt replied on November 9, 2020. Dkt. 32.

Judge McCarthy heard oral argument on the motion on November 12, 2020. Dkt. 33. On March 9, 2021, Judge McCarthy held an evidentiary hearing, which included testimony from Niagara Falls Police Department Detective Michael Badolato, on the suppression motion. Dkt. 45. After the parties submitted post-hearing briefing (Dkts. 56, 57, 58, 59), Judge McCarthy again heard oral argument on June 9, 2021. Dkt. 60.

On June 23, 2021, Judge McCarthy issued a joint Report, Recommendation, and Order (“R&R”) recommending that this Court deny Cassatt’s motions to suppress and dismiss. *See generally* Dkt. 61. Judge McCarthy also denied Cassatt’s motion for *Brady* and *Giglio* material and granted the Government’s cross-motion. *Id.*

Cassatt objected to the R&R on July 7, 2021. Dkt. 62. Cassatt argues that Detective Badolato did not have probable cause to effect a warrantless arrest of Cassatt; that Judge McCarthy erred in finding Cassatt’s arguments about the seizure of his cellphone were not timely; that the statute governing child pornography is unconstitutional in light of the decision in *Nat’l Fed. of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012), and as applied to Cassatt’s alleged production of child pornography through wholly intrastate means; and that Cassatt is entitled to immediate disclosure of all materially favorable impeachment evidence under *Giglio*. *See generally id.* The Government responded on July 22, 2021. Dkt. 65. Cassatt replied on July 29, 2021. Dkt. 66.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). As for non-dispositive matters, the district judge reviews appeals of a magistrate judge's order under a clearly erroneous or contrary to law standard. Fed. R. Civ. P. 72(a); *see United States v. Kelly*, No. 18-CR-217-A, 2021 WL 1920777, at *2 (W.D.N.Y. May 13, 2021) (reviewing non-dispositive orders denying motions for disclosure of certain information under a clearly erroneous or contrary to law standard of review).

This Court has reviewed the relevant record in this case, Judge McCarthy's R&R, the objections, and the parties' briefs. Based on that review, the Court accepts and adopts Judge McCarthy's recommendations to deny Cassatt's motions to suppress and to dismiss. As for Cassatt's objections to Judge McCarthy's order regarding the disclosure of *Giglio* material, the Court concludes that Judge McCarthy's order was not clearly erroneous or contrary to law. Thus, this Court affirms Judge McCarthy's order.

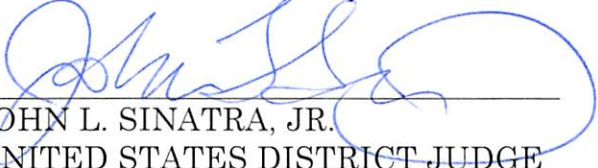
CONCLUSION

For the reasons stated above and in the R&R, the Court DENIES Cassatt's motions to suppress and to dismiss. Dkt. 22. The order is otherwise AFFIRMED.

The parties shall appear before this Court on August 11, at 1:30 p.m. for a status conference to set a trial date.

SO ORDERED.

Dated: August 10, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE